

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

INDYMAC BANK, F.S.B.	)	
a Federal Savings Bank,	)	
	)	
Plaintiff,	)	07 C 6226
	)	
vs.	)	Honorable Judge Joan B. Gottschall
	)	
GANESAN VISVABHARATHY,	)	
an individual	)	
	)	
Defendant	)	

**PLAINTIFF'S MOTION TO VACATE ORDER OF FEBRUARY 14, 2008**

Plaintiff, INDYMAC BANK, F.S.B. ("Plaintiff"), by and through its attorneys, Gary I. Blackman and James G. Martignon, hereby files this Motion to Vacate Order of February 14, 2008, denying Plaintiff's Motion for Judgment. In support thereof, Plaintiff states as follows:

1. On January 30, 2008, the Court entered an Order setting a briefing schedule pursuant to Defendant's oral motion for leave to file a Motion to Quash Service. The Court simultaneously granted Plaintiff leave to file a motion for default judgment with supporting memoranda by February 6, 2008, to be "entered and continued," pending the outcome of Defendant's Motion to Quash Service ("January 30, 2008 Order"). A copy of the Docket including the January 30, 2008 Order is attached hereto as Exhibit 1.

2. On February 6, 2006, Plaintiff timely filed its Motion for Entry of Judgment ("Motion for Judgment") and Memorandum in Support thereof, but inadvertently noticed its Motion for February 14, 2006, rather than just filing it. See Exhibit 1, Docket Entries, #16-18.

3. On February 14, 2008, the Court denied Plaintiff's Motion for Judgment ("February 14, 2008 Order"). A copy of the February 14, 2008 Order is attached hereto in Exhibit 1, Docket Entry # 19.

4. Plaintiff hereby requests that the Court vacate the February 14, 2008 Order denying Plaintiff's Motion for Judgment, and instead enter and continue Plaintiff's Motion for Judgment consistent with the Court's January 30, 2008 Order.

WHEREFORE, Plaintiff Indymac Bank, F.S.B. respectfully requests that the Court:

- A. Vacate the Court's Order of February 14, 2008, Docket Entry #19;
- B. Enter and continue Plaintiff's Motion for Entry of Judgment and Memorandum of Support thereof, consistent with the Court's Order of January 30, 2008; and
- C. Grant such further relief as the Court deems just and proper.

Date: February 22, 2008

INDYMAC BANK, F.S.B.

By: /s/ James G. Martignon  
One of Its Attorneys

Gary I. Blackman  
James G. Martignon  
Levenfeld Pearlstein, LLC  
2 N. LaSalle St., Suite 1300  
Chicago, IL 60602  
Tel: 312-346-8380  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to following and I hereby certify that I mailed by United States Postal Service the document to the following:

Bruce S. Sperling (ARDC #2687925)  
Daniel A. Shmikler (ARDC #6238089)  
Sperling & Slater, P.C.  
55 W. Monroe Street, Suite 3200  
Chicago, IL 60603  
(312) 641-3200

/s/ James G. Martignon  
James G. Martignon (ARDC #6277974)  
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jmartignon@lplegal.com

## **EXHIBIT 1**

COLE

**United States District Court  
Northern District of Illinois - CM/ECF LIVE, Ver 3.0 (Chicago)  
CIVIL DOCKET FOR CASE #: 1:07-cv-06226**

Indymac Bank, F.S.B. v. Visvabharathy  
Assigned to: Honorable Joan B. Gottschall  
Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 11/02/2007  
Jury Demand: None  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

**Indymac Bank, F.S.B.**  
*a Federal Savings Bank*

represented by **Gary Irwin Blackman**  
Levenfeld Pearlstein  
2 North LaSalle Street  
13th Floor  
Chicago, IL 60602  
(312)346-8380  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

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**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Ganesan Visvabharathy**  
*an individual*

represented by **Daniel A. Shmikler**  
Sperling & Slater  
55 West Monroe Street  
Suite 3200  
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/14/2008	<u>22</u>	NOTICE by Ganesan Visvabharathy re MOTION by Defendant Ganesan Visvabharathy to vacate order on motion for default judgment,, motion hearing,, terminate motions,, set/reset hearings, <u>1120</u> , memorandum in support of motion <u>21</u> (Shmikler, Daniel) (Entered: 02/14/2008)
02/14/2008	<u>21</u>	MEMORANDUM by Ganesan Visvabharathy in support of motion to vacate, motion for relief,, <u>20</u> (Shmikler, Daniel) (Entered: 02/14/2008)
02/14/2008	<u>20</u>	MOTION by Defendant Ganesan Visvabharathy to vacate order on motion for default judgment,, motion hearing,, terminate motions,, set/reset hearings, <u>11</u> (Shmikler, Daniel) (Entered: 02/14/2008)
02/14/2008	<u>19</u>	MINUTE entry before Judge Joan B. Gottschall : Motion hearing held on 2/14/2008. MOTION by Plaintiff Indymac Bank, F.S.B. for entry of judgment <u>16</u> is denied. Movant failed to appear. Mailed notice (rj, ) (Entered: 02/14/2008)
02/06/2008	<u>18</u>	NOTICE of Motion by James G Martignon for presentment of motion for judgment <u>16</u> before Honorable Joan B. Gottschall on 2/14/2008 at 09:30 AM. (Martignon, James) (Entered: 02/06/2008)
02/06/2008	<u>17</u>	MEMORANDUM by Indymac Bank, F.S.B. in support of motion for judgment <u>16</u> <i>Memorandum in Support of Motion for Entry of Judgment</i> (Martignon, James) (Entered: 02/06/2008)
02/06/2008	<u>16</u>	MOTION by Plaintiff Indymac Bank, F.S.B. for judgment <i>Motion for Entry of Judgment</i> (Martignon, James) (Entered: 02/06/2008)
01/30/2008	<u>15</u>	MINUTE entry before Judge Joan B. Gottschall :Status hearing held. Oral motion by Defendant's counsel for leave to file motion to quash service by 2/14/2008 is granted. Response is due by 2/28/2008. Reply in support is due by 3/13/2008. Plaintiff is given leave to file motion for default judgment with supporting memoranda by 2/6/2008 which will be entered and continued. Ruling by mail.Mailed notice (gej, ) (Entered: 01/31/2008)
01/25/2008	<u>14</u>	ATTORNEY Appearance for Defendant Ganesan Visvabharathy by Bruce S. Sperling (Sperling, Bruce) (Entered: 01/25/2008)
01/25/2008	<u>13</u>	ATTORNEY Appearance for Defendant Ganesan Visvabharathy by Daniel A. Shmikler (Shmikler, Daniel) (Entered: 01/25/2008)
01/22/2008	<u>12</u>	MINUTE entry before Judge Joan B. Gottschall :Prove-up hearing set for 1/23/08 is stricken and reset to 1/30/2008 at 09:30 AM by request of Plaintiff's counsel via telephone. Mailed notice (rj, ) (Entered: 01/22/2008)

01/17/2008	<u>11</u>	MINUTE entry before Judge Joan B. Gottschall: Motion hearing held. Plaintiff's motion for default judgment <u>9</u> is granted. It is hereby ordered that default is entered against defendant, Ganesan Visvabharathy for failure to appear or file an answer or responsive pleading. Prove-up hearing is set for 1/23/08 at 9:30 a.m. Mailed (vmj, ) (Entered: 01/17/2008)
01/02/2008	<u>10</u>	NOTICE of Motion by James G Martignon for presentment of motion for default judgment <sup>9</sup> before Honorable Joan B. Gottschall on 1/17/2008 at 09:30 AM. (Martignon, James) (Entered: 01/02/2008)
01/02/2008	<u>9</u>	MOTION by Plaintiff Indymac Bank, F.S.B. for default judgment as to <i>Ganesan Visvabharathy</i> (Attachments: # <u>1</u> Exhibit)(Martignon, James) (Entered: 01/02/2008)
11/26/2007	<u>8</u>	MINUTE entry before Judge Joan B. Gottschall :Status hearing set for 1/23/2008 at 09:30 AM. Plaintiff is directed to advise the defendants of the status hearing forthwith. Parties are directed to discuss settlement of case, consent to proceed before the Magistrate Judge and a proposed discovery plan. Mailed notice (rj, ) (Entered: 11/26/2007)
11/02/2007	<u>7</u>	2 SUMMONS and 2 copies Issued as to Defendant Ganesan Visvabharathy (2 difference addresses) (vmj, ) (Entered: 11/06/2007)
11/02/2007	<u>5</u>	RULE 7.1 and Local Rule 3.2 Disclosure Statement by Indymac Bank, F.S.B. (vmj, ) (Entered: 11/06/2007)
11/02/2007	<u>4</u>	ATTORNEY Appearance for Plaintiff Indymac Bank, F.S.B. by James G Martignon (vmj, ) (Entered: 11/06/2007)
11/02/2007	<u>3</u>	ATTORNEY Appearance for Plaintiff Indymac Bank, F.S.B. by Gary Irwin Blackman (vmj, ) (Entered: 11/06/2007)
11/02/2007	<u>2</u>	CIVIL Cover Sheet (vmj, ) (Entered: 11/06/2007)
11/02/2007	<u>1</u>	COMPLAINT filed by Indymac Bank, F.S.B.; Filing fee \$ 350.(vmj, ) (Entered: 11/06/2007)

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02/21/2008 15:43:54			
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